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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/579,938	05/26/2000	Timothy J Williams	TJW-00100	8295

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EXAMINER

SORKIN, DAVID L

ART UNIT PAPER NUMBER

1723

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/579,938

Applicant(s)

WILLIAMS, TIMOTHY J

Examiner

David L. Sorkin

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,9-11 and 13-34 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 20 and 27 is/are allowed.
6) ☒ Claim(s) 1,3-7,9-11,13-19,21-26 and 28-34 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 29-33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. These claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. These claims recite the limitation "the dispensing mechanism has a size sufficient for paint to flow through". However, the issue of the size of the dispensing mechanism is simply not discussed in the originally filed specification at all.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 29-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The scope of the dispensing mechanism (means for dispensing) is rendered indefinite by the phrase "the dispensing mechanism has a size sufficient for paint to flow through". Any relationship between the size of a dispensing mechanism and the ability of paint to flow therethrough is to vague and non-causal to reasonable set forth the metes and bounds of the invention. Firstly, shape of the

dispensing mechanism, surface interactions forces, composition of the particular paint, composition(s) of the dispensing mechanism (including hydrophobicity properties or other surface interaction determining properties) and especially pressure drop (including due to height of paint in the container) would all influence whether or not paint flows in a particular situation. Size of a dispensing mechanism alone does not determine whether or not paint flows. Secondly, there is not particular set of flow properties for "paint". The word "paint" does not imply any particular set of viscosity or surface interaction determining properties.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 3, 4 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by DeVito (US 5,842,606). Regarding claim 1, DeVito ('606) discloses a container comprising a plurality of compartments (a plurality of 34) having a front, a back, a first side, a second side and a base; a frame (a plurality of 12 joined together as disclosed) holding the compartments; and means (52) for dispensing removably coupled to the base of the compartments, wherein the means for dispensing is capable of dispensing

without lifting the compartments. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). See also *In re Schreiber*, 44 USPQ2d 1429, 1931 (Fed. Cir. 1997), where a claimed popcorn dispensing spout was held anticipated by a spout for dispensing oil from an oil can. The container of DeVito ('606) is intended to hold liquids (see col. 1, lines 6-8) and clearly would be capable of holding and dispensing paint. Therefore, the claim is still anticipated even though the reference does not use the word "paint". Regarding claim 3, the means for dispensing paint includes a spigot assembly (see Fig. 5). Regarding claim 4, the frame includes mounting slots (38). Regarding claim 29, while, as discussed above, the scope of this claim is vague, one of ordinary skill in the art would understand that a structure which dispenses beverages would be capable of dispensing paint, because the term "paint" includes liquids of similar consistency to common beverages. Applicant argues "The size of a dispensing mechanism which allows paint to flow through is necessarily bigger than the size of a beverage or liquid dispensing mechanism". Applicant's supposed belief that a dispensing mechanism which allows paint to flow is necessarily bigger than the size of a liquid dispensing mechanism is overwhelmingly oxymoronic because paint is a liquid. Applicant admits paint is a liquid, for example, on page 8 line 7 and page 8 line 26 of the specification as filed. Regarding

applicant's statement that a dispensing mechanism which allows paint to flow is necessarily bigger than the size of a beverage dispensing mechanism, an attorney's argument does not constitute evidence. Contrary to applicant's arguments, paint may be in the same viscosity range as beverages. For example Moran (US 5,899,362) discloses an example of paint having a viscosity of "7 centipoise" (col. 8 line 24), while Cole-Palmer's Food TechSource discloses that milk, cream and tomato juice have viscosities of 3.2, 16.5, and 176 centipoise respectively. The above data clearly refutes applicant's uncorroborated assertions. (See col. 5, lines 26-67 for a description of the dispensing mechanism).

7. Claims 1, 3, 4 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Briggs (US 6,109,482). Regarding claim 1, Briggs ('482) discloses a container comprising a plurality of compartments (see Fig. 5) having a front, back, first and second side and base; a frame (a plurality of 12 joined together as shown in Fig. 2) holding the compartments; and means (22) for dispensing removably coupled to the base of the compartments for dispensing from the compartments, wherein the means for dispensing is capable of dispensing without lifting the compartments. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, supra. Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. See also *In re Schreiber*, supra., where a claimed popcorn dispensing spout was held anticipated by a spout for

dispensing oil from an oil can. The container of Briggs ('482) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding and dispensing paint. Therefore, the claim is still anticipated even though the reference does not use the word "paint". Regarding claim 3, the means for dispensing paint includes a spigot assembly (see Fig. 3). Regarding claim 4, the frame includes mounting slots (42). Regarding claim 29, while, as discussed above, the scope of this claim is vague, one of ordinary skill in the art would understand that a structure which dispenses beverages would be capable of dispensing paint, because the term "paint" includes liquids of similar consistency to common beverages. Applicant argues "The size of a dispensing mechanism which allows paint to flow through is necessarily bigger than the size of a beverage or liquid dispensing mechanism". Applicant's supposed belief that a dispensing mechanism which allows paint to flow is necessarily bigger than the size of a liquid dispensing mechanism is overwhelmingly oxymoronic because paint is a liquid. Applicant admits paint is a liquid, for example, on page 8 line 7 and page 8 line 26 of the specification as filed. Regarding applicant's statement that a dispensing mechanism which allows paint to flow is necessarily bigger than the size of a beverage dispensing mechanism, an attorney's argument does not constitute evidence. Contrary to applicant's arguments, paint may be in the same viscosity range as beverages. For example Moran (US 5,899,362) discloses an example of paint having a viscosity of "7 centipoise" (col. 8 line 24), while Cole-Palmer's Food TechSource discloses that milk, cream and tomato juice have viscosities of 3.2, 16.5, and 176 centipoise respectively. The above data clearly refutes applicant's uncorroborated assertions. Note also the

dispensing mechanism of Briggs ('482) is so big that it fits around the neck of a 2-liter soda bottle (see col. 4 lines 14-18).

8. Claim 34 is rejected under 35 U.S.C. 102(b) as being anticipated by Corbin et al. (US 2,848,019) discloses a paint storage container comprising one or more colors of paint (see col. 9, lines 66-73); a plurality of paint storage compartments (24) each for storing a color paint, each paint storage compartment having a front, a back, a first side and a base (see Figs. 1, 4 and 15); a frame (20,22) holding the paint storage compartments; and a dispensing mechanism (43,33) coupled to the base of the paint storage compartments for dispensing paint from the paint storage compartments, wherein the dispensing mechanism is capable of dispensing paint without lifting the paint compartments (see col. 3 line 21 to col. 4 line 2).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 3-7, 9-11, 13-19, 22-26 and 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al. (US 4,311,017). Regarding claim 1, Reed ('017) discloses a container comprising a plurality of compartments (24,27), each having a front, a back, a first side, a second side and a base (see Fig. 2, 3 and 5; col. 3, lines 15 and 16); a frame (2) holding the compartments; and means (15,16) for dispensing

coupled to the base. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, supra. Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. The container of Reed ('017) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding paint. Therefore, the claims are still unpatentable even though the reference does not use the word "paint". While it is not explicitly stated that the dispensing means is removable (although Fig. 3 appears to depict a hex nut), the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it is has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 3, the dispensing means is a spigot assembly (see col. 5, lines 11-37). Regarding claim 4, the frame includes slots (101'). Regarding claim 5, one or more removable lids (25, 26 and/or 3) selectively cover the paint compartments, and means for stirring (111,112,113,114) are removably coupled to the lids. Regarding claim 6, the stirring means further comprises a circular base (111' or 114) a rod (112) coupled to the base, and a stirring fan apparatus (113) coupled to the rod. While it is not explicitly stated that the stirring fan apparatus is removable, the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it is has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 7, Reed ('017) discloses a container comprising a plurality of compartments (24,27), each having a

front, a back, a planar first side and a planar second side and a base (see Fig. 2, 3 and 5; col. 3, lines 15 and 16); a frame (2) holding the compartments; lids (25,26 and/or 3); a stirring assembly (111,112,113,114) removably coupled to the lid(s); and a dispensing mechanism (15,16) coupled to the base. The dispensing mechanism is capable of dispensing without lifting the compartments. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, supra. Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. The container of Reed ('017) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding paint. Therefore, the claim is still anticipated even though the reference does not use the word "paint". Regarding claim 9, the frame includes slots (101'). Regarding claim 10, the stirring means further comprises a circular base (111' or 114) a rod (112) coupled to the base, and a stirring fan apparatus (113) coupled to the rod. While it is not explicitly stated that the stirring fan apparatus is removable, the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it is has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 11, Reed ('017) discloses a container comprising a plurality of compartments (24,27), each having a front, a back, a first side, a second side and a base (see Fig. 2, 3 and 5; col. 3, lines 15 and 16); a frame (2) holding the compartments; a dispensing mechanism (15,16), one or more removable lids (25, 26 and/or 3) covering the

compartments; and a stirring assembly (111,112,113,114) removably coupled to the lids. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, supra.

Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. The container of Reed ('017) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding paint. Therefore, the claims are still unpatentable even though the reference does not use the word "paint". While it is not explicitly stated that the dispensing means is removable (although Fig. 3 appears to depict a hex nut), the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 13, the dispensing mechanism includes a spigot assembly (see col. 5, lines 11-37). Regarding claim 14, the frame includes slots (101'). Regarding claim 15, the stirring assembly further comprises a circular base (111' or 114) a rod (112) coupled to the base, and a stirring fan apparatus (113) coupled to the rod. While it is not explicitly stated that the stirring fan apparatus is removable, the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 16, Reed ('017) discloses a reusable container comprising a plurality of compartments (24,27) each having a first front, a first back, a first side, a second side and a base; body (2) holding the paint

compartments having a second front, a second back, a planar third side and a planar fourth side (see Fig. 1); one or more removable lids (25, 26 and/or 3) coupled to the paint compartments having an outer side, an inner opposite side and an aperture located through the lid from the outer side to the inner opposite side; a stirring mechanism (111,112,113,114) removably coupled to the outer side of the lids having an integrally formed rod located at a central axis of the stirring mechanism, wherein the rod (112) is positioned through the aperture in the lids; a fan apparatus (113) coupled to the rod of the stirring mechanism on the inner opposite side of the lids; and a dispensing mechanism (15,16) coupled to the base. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, supra. Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. The container of Reed ('017) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding paint. Therefore, the claims are still unpatentable even though the reference does not use the word "paint". While it is not explicitly stated that the fan apparatus is removable, the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). Regarding claim 17, the body includes slots (101'). Regarding claim 18, the stirring mechanism includes a handle (see col. 6, lines 1 and 15-21). Regarding claim 19, the interior of the compartments has a sloped area and a reservoir area (see

Figs. 2 and 3). Regarding claim 22, Reed ('017) discloses a reusable container comprising a body (2) having a first side and a second side and a plurality of compartments (24,27) each having a front, a back, a planar first side, a planar second side and a base; one or more removable lids (25, 26 and/or 3) coupled to the compartments having an outer side, an inner opposite side and an aperture located through the lid from the outer side to the inner opposite side; a stirring mechanism (111,112,113,114) removably coupled to the outer side of the lids having an integrally formed rod located at a central axis of the stirring mechanism, wherein the rod (112) is positioned through the aperture in the lids extending into a corresponding compartment; a fan apparatus (113) coupled to the rod of the stirring mechanism on the inner opposite side of the lids; and a dispensing mechanism (15,16) coupled to the base. While the claims include expressions concerning "paint", "[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining the patentability of the apparatus claim". *Ex parte Thilbault*, supra. Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto* supra. The container of Reed ('017) is intended to hold liquids (see col. 1, lines 6-9) and clearly would be capable of holding paint. Therefore, the claims are still unpatentable even though the reference does not use the word "paint". While it is not explicitly stated that the fan apparatus is removable, the reference recognizes advantages, of making parts removable (see col. 5, lines 35-37). Furthermore, it is has been held that making parts removable "would be obvious", *In re Dulberg*, 129 USPQ 349 (CCPA 1961). See also *In re Larson*, 144

USPQ 347, 349 (CCPA 1965) regarding the obviousness of making part integral.

Regarding claim 23, the paint compartments are single walled (see Fig. 5). Regarding claim 24, the body includes slots (101'). Regarding claim 25 the stirring mechanism includes a handle (see col. 6, lines 1 and 15-21). Regarding claim 26, the interior of the compartments has a sloped area and a reservoir area (see Figs. 2 and 3). Regarding claims 29-33, while, as discussed above, the scope of these claims is vague, one of ordinary skill in the art would understand that a structure which dispenses beverages would be capable of dispensing paint, because the term "paint" includes liquids of similar consistency to common beverages. Applicant argues "The size of a dispensing mechanism which allows paint to flow through is necessarily bigger than the size of a beverage or liquid dispensing mechanism". Applicant's supposed belief that a dispensing mechanism which allows paint to flow is necessarily bigger than the size of a liquid dispensing mechanism is overwhelmingly oxymoronic because paint is a liquid. Applicant admits paint is a liquid, for example, on page 8 line 7 and page 8 line 26 of the specification as filed. Regarding applicant's statement that a dispensing mechanism which allows paint to flow is necessarily bigger than the size of a beverage dispensing mechanism, an attorney's argument does not constitute evidence. Contrary to applicant's arguments, paint may be in the same viscosity range as beverages. For example Moran (US 5,899,362) discloses an example of paint having a viscosity of "7 centipoise" (col. 8 line 24), while Cole-Palmer's Food TechSource discloses that milk, cream and tomato juice have viscosities of 3.2, 16.5, and 176 centipoise respectively. The above data clearly refutes applicant's uncorroborated assertions. The dispensing

mechanism of Reed ('017) is shown in Figs. 1 and 3 and described in col. 5, lines 11-37.

11. Claims 21 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al. (US 4,311,017) in view of Briggs (US 6,109,482). The apparatus of Reed ('017), discussed above regarding claims 16 and 22, fails to include rounded ribs and channels. Briggs ('482) discloses rounded ribs (44) and channels/grooves (42). It is considered that it would have been obvious to one of ordinary skill in the art to have provided the apparatus of Reed ('017) with ribs and channels/grooves as taught by Briggs ('482), because Briggs ('482) states that such ribs and grooves provided the benefit of allowing removable side-by-side coupling of a plurality of unit apparatuses (see col. 5, lines 13-32).

Allowable Subject Matter

12. Claims 20 and 27 are allowed.

Response to Arguments

13. Applicant argues regarding the decision *In re Schreiber, supra.*, "The claims in *In re Schreiber*, are directed broadly to a 'dispensing top'", not a "'popcorn dispensing top'". However, claim 1 of *In re Schreiber* reads "A dispensing top for passing only several kernels of popped popcorn at a time from an open-ended container filled with popped popcorn...". The Federal Circuit addressed the issue of whether the dispenser would be capable of dispensing popped popcorn in the recited manner and concluded that the oil dispenser would be so capable.

14. Applicant argues "The size of a dispensing mechanism which allows paint to flow through is necessarily bigger than the size of a beverage or liquid dispensing mechanism". Applicant's supposed belief that a dispensing mechanism which allows paint to flow is necessarily bigger than the size of a liquid dispensing mechanism is overwhelmingly oxymoronic because paint is a liquid. Applicant admits paint is a liquid, for example, on page 8 line 7 and page 8 line 26 of the specification as filed. Regarding applicant's statement that a dispensing mechanism which allows paint to flow is necessarily bigger than the size of a beverage dispensing mechanism, an attorney's argument does not constitute evidence. Contrary to applicant's arguments, paint may be in the same viscosity range as beverages. For example Moran (US 5,899,362) discloses an example of paint having a viscosity of "7 centipoise" (col. 8 line 24), while Cole-Parmer's Food TechSource discloses that milk, cream and tomato juice have viscosities of 3.2, 16.5, and 176 centipoise respectively. The above data clearly refutes applicant's uncorroborated assertions.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in cursive script, appearing to read "David L. Sorkin".

David L. Sorkin
Examiner
Art Unit 1723

David Sorkin